

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Volha Shauchenka	Team: Squad #8	CCRB Case #: 201807718	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 09/08/2018 2:11 AM	Location of Incident: In front of § 87(2)(b) 75 PCT stationhouse	Precinct: 75	18 Mo. SOL 3/8/2020	EO SOL 3/8/2020	
Date/Time CV Reported Sat, 09/08/2018 2:52 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:11 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM John Sikora	22498	953735	075 PCT
2. SSA Robert Martinez	01369	922716	075 PCT
3. POM Daniel Gerardi	24821	953902	075 PCT
4. POM Muhammed Ali	06039	948601	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Noel Damico	12566	951650	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Robert Martinez	Abuse: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez supervised the stop of § 87(2)(b)	
B.POM Daniel Gerardi	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi frisked § 87(2)(b)	
C.POM Daniel Gerardi	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi searched § 87(2)(b)	
D.POM Daniel Gerardi	Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi spoke discourteously to § 87(2)(b)	
E.POM Daniel Gerardi	Force: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi used physical force against § 87(2)(b)	
F.POM John Sikora	Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora used physical force against § 87(2)(b)	
G.SSA Robert Martinez	Force: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez used physical force against § 87(2)(b)	
H.SSA Robert Martinez	Discourtesy: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez spoke discourteously to § 87(2)(b)	
I.POM John Sikora	Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM John Sikora	Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora restricted § 87(2)(b)'s breathing.	
K.POM Muhammed Ali	Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Muhammed Ali spoke discourteously to individuals.	
L.POM Daniel Gerardi	Abuse: At the 75th Precinct stationhouse, Police Officer Daniel Gerardi strip-searched § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On September 8, 2018, complainant-witness § 87(2)(b) filed this complaint with the CCRB on behalf of § 87(2)(b) with IAB, generating original log #18-35172. During the course of the investigation, unidentified individuals were also determined to be victims in the case.

On September 8, 2018, at approximately 2:11 a.m., Sgt. Robert Martinez, PO Daniel Gerardi, and PO John Sikora of the 75th Precinct stopped § 87(2)(b) in front of § 87(2)(b) in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Gerardi frisked and searched § 87(2)(b) during which he told him, “It’s fucking disgusting” (**Allegations B and C: Abuse of Authority**, § 87(2)(g)). **Allegation D: Discourtesy**, § 87(2)(g). All three officers subsequently took § 87(2)(b) to the ground, and Sgt. Martinez told him, “Stop fucking resisting” (**Allegations E, F, and G: Force**, § 87(2)(g)). **Allegation H: Discourtesy**, § 87(2)(g). PO Sikora punched § 87(2)(b) in his shoulder and chest and allegedly restricted his breathing by placing his knee on § 87(2)(b)’s neck (**Allegations I and J: Force**, § 87(2)(g)). PO Mohammed Ali of the same command, who responded among numerous back-up officers, told unidentified individuals who had gathered, “Alright, somebody’s fucking up there” (**Allegation K: Discourtesy**, § 87(2)(g)). § 87(2)(b) was ultimately arrested for numerous narcotics violations, resisting arrest, consuming an alcoholic beverage in public, and disorderly conduct. He was taken to the 75th Precinct stationhouse, where PO Gerardi strip-searched him (**Allegation L: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) provided one cell phone video recording that partially captured the incident [BR 05, *Original*]. The incident also was captured by Sgt. Martinez’s, PO Sikora’s, PO Gerardi’s, PO Ali’s, PO Rolex Roldan’s, PO Samuel Hui’s, PO Daniel Ingber’s, PO Carlos Velasquez’s, PO Zachary Chardavoyne’s, PO Mahmudul Bhuiyan’s, PO Barbara Maier’s, PO Amanda Brandes’, and PO Noel Damico’s (all of the 75th Precinct) body-worn cameras (BWC) [BR 07-25, *Originals*]. § 87(2)(g), § 87(4-b)

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez supervised the stop of § 87(2)(b)

It is undisputed that on September 8, 2018, at approximately 2:11 a.m., in front of § 87(2)(b) in Brooklyn, Sgt. Martinez, PO Gerardi and PO Sikora stopped § 87(2)(b). The circumstances that preceded the stop are in question.

After providing an unverified phone statement, § 87(2)(b) withdrew his complaint for family reasons [See IA64]. The investigation’s attempts to obtain a verified statement from § 87(2)(b) were unsuccessful [See detailed IA#210, BR 31]. The CCRB proceeded with a full investigation based on the obtained video footage.

§ 87(2)(b) stated that § 87(2)(b) was standing among a group of other individuals when officers approached him because he was holding a red plastic cup [BR 06]. Although the group was not doing anything, people lingering at the location has been an ongoing issue in the area. However, Sgt. Martinez’s BWC, attached to IA68, indicates that § 87(2)(b) was alone during the encounter [BR 07].

Sgt. Martinez testified that he and his partners, PO Gerardi and PO Sikora, were patrolling the vicinity of the incident location known to be a high-crime area for drug activity, gun violence, public drinking and prostitution, which was confirmed by his partners [BR 28]. When their car was moving northbound on Van Siclen Avenue, Sgt. Martinez observed § 87(2)(b) walking by himself in the same direction. He was holding a four-inch clear plastic cup with a dark substance which looked like alcohol. When § 87(2)(b) looked back and observed the officers, he attempted to hide behind a parked van. It appeared to Sgt. Martinez that § 87(2)(b) attempted either to place to or remove something from his front waistband area. Sgt. Martinez did not recall having any discussion with his partners about his observation but recalled that the officers then stopped the car and approached § 87(2)(b) to investigate a possible drinking violation. According to Sgt. Martinez's BWC, attached to IA68, after the stop had already been initiated, § 87(2)(b) admits he is slightly intoxicated at 2:06 [BR 07].

PO Gerardi testified that he first saw § 87(2)(b) when he was leaning on the said van [BR 29]. Upon observing the officers, § 87(2)(b) reached into his waist band and then extended his arm in a throwing motion. PO Gerardi also observed that § 87(2)(b)'s pants pockets were not flat but could not describe the size and shape of the pocket bulges. PO Gerardi did not recall if the officers had any discussion prior to stopping § 87(2)(b) but stated his intention was to investigate what § 87(2)(b) threw. It was only after approaching § 87(2)(b) that PO Gerardi observed a clear plastic eight-ounce cup on the ground near the van where § 87(2)(b) was standing.

PO Sikora testified that while driving the police vehicle, he observed § 87(2)(b) drink from a clear "solo-sized" plastic cup behind the said van, which was confirmed by the Criminal Court Complaint prepared by him [BR 30, 27]. PO Sikora stated this type of cups is commonly used at the location by individuals drinking alcohol. PO Sikora also described the liquid in the cup as brown. PO Sikora did not recall whose decision it was to stop § 87(2)(b) but stated the officers approached him for the drinking violation since there was nothing else about § 87(2)(b) that caused PO Sikora to suspect him of any criminality.

§ 87(2)(b)'s arrest report #§ 87(2)(b) notes that among other violations, he was charged with consuming an alcoholic beverage in public [NYPD 18].

Although none of the three officers took responsibility for making the decision to stop § 87(2)(b) to anyone of them, since Sgt. Martinez was the highest-ranking officer on the scene at the time and supervised the stop, this allegation is being pled against him.

Although PO Gerardi did not suggest that he suspected § 87(2)(b) of drinking, § 87(2)(b) corroborated Sgt. Martinez's and PO Sikora's account that § 87(2)(b) was seen with a plastic cup indicative of someone consuming alcohol. Furthermore, § 87(2)(b) was charged with consuming an alcoholic beverage in public as a result of this incident. § 87(2)(b), § 87(2)(g)

According to New York City Administrative Code §10-125b, "no person should drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container with an alcoholic beverage in any public place except a block party, feast or similar function for which a permit has been obtained" [BR 32]. As per New York State Criminal Procedure Law §140.50, an officer may stop an individual who he/she reasonably suspects has committed or is about to commit a crime [BR 33].

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi frisked § 87(2)(b)

Allegation (C) Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi searched § 87(2)(b)

Allegation (D) Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi spoke discourteously to § 87(2)(b)

It is undisputed that PO Gerardi frisked and searched § 87(2)(b). However, the circumstances that led to the frisk are in question. It is also undisputed that PO Gerardi spoke discourteously to § 87(2)(b). This interaction was recorded on PO Sikora's BWC.

§ 87(2)(b) stated that after the officers approached him, § 87(2)(b) started walking away from them [BR 06]. Sgt. Martinez grabbed him by his belt, and PO Gerardi frisked him in his groin area, stating he felt something there.

PO Gerardi testified that § 87(2)(b)'s acted "evasively" by reaching towards his waistband after observing the officers, which is usually indicative of someone attempting to hide something [BR 29]. When PO Gerardi was walking towards § 87(2)(b) he noticed two bulges on him: one in his left pants pocket and one in his crotch area [BR 29]. Although PO Gerardi could not describe the size and shape of the bulges, he stated the second bulge was harder and appeared to be something out of place, which lead him to believe that could be a gun or another weapon. PO Gerardi instructed § 87(2)(b) to place his hands on a nearby vehicle but he took them off almost immediately. § 87(2)(b) continued taking his hands off the car repeatedly. PO Gerardi patted both of § 87(2)(b)'s front pants pockets and felt a lot of items in his front left pocket. Because of § 87(2)(b)'s earlier actions, PO Gerardi wanted to ensure he was not concealing a weapon. PO Gerardi removed a dirty tissue and a bag of marijuana from that pocket. He could not describe the size of the marijuana bag. PO Gerardi then patted § 87(2)(b)'s right front pocket but did not recall if he removed anything from there. Finally, PO Gerardi patted § 87(2)(b)'s crotch area where he felt a hard round or cylindrical object. As soon as PO Gerardi did so, § 87(2)(b) attempted to run away, which resulted in the officers taking him to the ground. While the officers attempted to place § 87(2)(b) on the ground, he placed his hands in front of his mouth, as if attempting to put something inside. After the officers were able to handcuff § 87(2)(b), PO Gerardi observed a Vicks bottle near § 87(2)(b)'s head. One of the officers, who PO Gerardi did not recall, said the bottle came from § 87(2)(b). PO Gerardi initially testified he did not recall using any profanity towards § 87(2)(b).

Video recorded by PO Sikora's BWC, attached to IA69, depicts the events after § 87(2)(b) had already been stopped [BR 08]. At 0:13, PO Gerardi frisks § 87(2)(b) while he is placed against the hood of a parked sedan. § 87(2)(b) raises his hands periodically and PO Gerardi moves them down every time. At 1:01, PO Gerardi asks § 87(2)(b) if he has anything other than the marijuana on him, and he replies he does not. At 1:02, PO Gerardi says, "And a dirty snot rag?" to which § 87(2)(b) replies, "Yeah." At 1:07, PO Gerardi says, "It's fucking disgusting." § 87(2)(b) repeatedly tells the officers that he is sick.

Upon reviewing the video during his interview, PO Gerardi explained he made the above-noted discourteous remark because he touched someone else's dirty tissue and he felt that was disgusting [BR 29]. There was no other reason for PO Gerardi's choice of words.

Sgt. Martinez testified he went to the van when the stop was initiated to investigate the cup that § 87(2)(b) threw, while PO Gerardi approached § 87(2)(b) [BR 28]. This was corroborated by Sgt. Martinez's BWC from IA68 [BR 07]. PO Gerardi attempted to frisk § 87(2)(b)'s waistband area but was unable to do so since § 87(2)(b) would not keep his hands on the car. Sgt. Martinez could not attest to PO Gerardi's decision to frisk § 87(2)(b) but based on what was recovered later (the Vicks bottle), he assumed that PO Gerardi must have observed some sort of a bulge on § 87(2)(b). Sgt. Martinez did not observe any bulges or suspicious items on § 87(2)(b) since he did not have much time to observe him.

Sgt. Martinez's BWC footage, attached to IA68, shows him walk to the van while PO Gerardi approaches § 87(2)(b) [BR 07]. At 1:13, Sgt. Martinez says, "... probably boofed, you know what I'm saying. John, John. He probably boofed right here." Upon reviewing the video, Sgt. Martinez explained that the term "boofing" is used in reference to someone placing narcotics in their pants or crotch area [BR 28]. Sgt. Martinez stated he probably made that conclusion about § 87(2)(b) once he went behind the van.

PO Sikora's account of the circumstances preceding the frisk and search of § 87(2)(b) was partially consistent with that of PO Gerardi [BR 30]. PO Sikora also observed an "abnormal" bulge in the middle of § 87(2)(b)'s waistband area in the front. PO Sikora could not describe the size and shape of the bulge but stated usually nothing should bulge out from the middle of the waistband. After § 87(2)(b) was handcuffed, PO Sikora learned from other officers that § 87(2)(b) tossed a three-inch Vicks bottle away from his person.

Cell phone video recorded by § 87(2)(b) attached to IA13, depicts the circumstances after § 87(2)(b)'s take-down [BR 05]. At 0:01, as § 87(2)(b) is lying on the ground and the officers are attempting to handcuff him, a plastic or a glass bottle is seen lying on the ground under § 87(2)(b)'s face. As PO Sikora stands up at 0:07, he accidentally kicks the bottle further down the road. The bottle appears to be made of dark plastic or glass and has blue top and labels and is no more than three inches in size.

Sgt. Martinez and PO Gerardi testified that they later discovered a white rocky substance in the bottle, which they believed to be crack-cocaine [BR 28, 29]. Property voucher #3001014167 lists nine twists of alleged crack cocaine, one large rock of alleged crack cocaine, two plastic bags of marijuana and a Vicks Vapor Rub bottle [NYPD 09].

NYPD Patrol Guide Procedure 203-09 states that officers should interact with the public in a professional manner [BR 34]. Officers may use limited profanity towards civilians to gain control of a dynamic situation. Unacceptable under normal circumstances, profanity may be excused in the course of a violent confrontation. Police Department v. St. Clair, DAO-DCT Case #2017-17276 [BR 35].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: In front of § 87(2)(b) in Brooklyn, Police Officer Daniel Gerardi used physical force against § 87(2)(b)

Allegation (F) Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora used physical force against § 87(2)(b)

Allegation (G) Force: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez used physical force against § 87(2)(b)

Allegation (H) Discourtesy: In front of § 87(2)(b) in Brooklyn, Sergeant Robert Martinez spoke discourteously to § 87(2)(b)

It is undisputed that shortly after the stop was initiated, Sgt. Martinez, PO Gerardi, and PO Sikora took § 87(2)(b) to the ground and Sgt. Martinez spoke to him discourteously. However, the circumstances that preceded the force used by the officers are in question.

§ 87(2)(b), § 87(2)(a) CVR § 50-b

All three officers immediately took § 87(2)(b) to the ground, where he landed on his stomach. All three officers documented this in the Threat, Resistance and Injury (TRI) Reports they individually prepared and noted that § 87(2)(b) sustained minor swelling as a result [NYPD 10]. Investigating Supervisor's Assessment Report (ISAR) prepared by Capt. Alison Esposito of PSA3 notes that § 87(2)(b) ignored the officers' commands, attempted to walk away from them and at some point, they took him to the ground [NYPD 03]. According to the BWC footage from PO Damico, attached to IA84, § 87(2)(b) sustained minor swelling and a cut to his lower lip (2:45) [BR 23]. Based on NYPD Event #§ 87(2)(b) he was subsequently taken to the hospital due to the injury [NYPD 11].

BWC footage recorded by Sgt. Martinez, attached to IA68, at 2:13, depicts a sudden struggle that ensues between the officers and § 87(2)(b) after PO Gerardi started frisking him [BR 07]. The video is shaky and no actions are visible in the frame. Immediately as it began, an officer is heard saying, "Stop fucking resisting." During the interview, Sgt. Martinez stated it was probably him who made that statement and explained he said it to emphasize his command in a violent and hostile situation. Sgt. Martinez's explained that his BWC footage ends after that because his camera got turned off during the struggle. The same encounter was recorded by PO Sikora's BWC, attached to IA69, which shows parts of the frisk and § 87(2)(b) raising his arms up several times [BR 08]. When the struggle begins at 1:45, the image becomes shaky and no actions are visible. However, Sgt. Martinez is heard making the same statement to § 87(2)(b).

Cell phone video recorded by § 87(2)(b) attached to IA13, shows the events after § 87(2)(b) was already taken to the ground [BR 05].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (I) Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora used physical force against § 87(2)(b)

Although it is undisputed that PO Sikora punched § 87(2)(b) in his shoulders and chest, this allegation was not made by § 87(2)(b) nor was it captured by the BWC or cell phone video footage.

All three officers testified that § 87(2)(b) resisted in various ways after he was taken to the ground. PO Sikora stated that all three officers yelled at § 87(2)(b) to stop resisting but he attempted to push himself off the ground [BR 30]. While PO Sikora was on top of § 87(2)(b)'s back, § 87(2)(b) spat at him. § 87(2)(b) also reached for his waistband, kicked his feet and moved his shoulders in an attempt to prevent the officers from pulling his hands behind his back. As a result, PO Sikora used wrestling and grappling techniques to try to pull § 87(2)(b)'s arms behind his back and punched him twice in his shoulder and chest area. Eventually, the officers were able to handcuff § 87(2)(b). PO Sikora documented his use of force in the TRI prepared by him [NYPD 10]. PO Sikora's account was partially supported by the ISAR, which also notes that § 87(2)(b) complained of pain to chest and knee [NYPD 03].

Sgt. Martinez's and PO Gerardi's statements were consistent with PO Sikora's account of § 87(2)(b)'s actions after he was taken to the ground [BR 28, 29]. Both stated that once on the ground, § 87(2)(b) continuously placed his hands underneath his body and reached towards his waistband area. After § 87(2)(b) moved his hands towards his mouth, as if attempting to place something in it, he stopped resisting and the officers were able to handcuff him. Neither Sgt. Martinez nor PO Gerardi observed PO Sikora use any force towards § 87(2)(b) during the handcuffing.

§ 87(2)(b), § 87(2)(g)

Allegation (J) Force: In front of § 87(2)(b) in Brooklyn, Police Officer John Sikora restricted § 87(2)(b)'s breathing.

It is disputed as to whether PO Sikora restricted § 87(2)(b)'s breathing.

§ 87(2)(b) testified that while § 87(2)(b) was on the ground, PO Sikora placed his knee on § 87(2)(b)'s neck, where he kept it for three to five minutes while the officers attempted to handcuff him [BR 06]. Other witnesses were telling PO Sikora to get his knee off § 87(2)(b)'s neck.

Cell phone video footage recorded by § 87(2)(b) attached to IA13, opens with PO Sikora holding his right knee somewhere below the back of § 87(2)(b)'s head (between neck and shoulders) while he is on the ground [BR 05]. Civilians not in view of the camera start screaming that he is holding his knee on § 87(2)(b)'s neck and PO Sikora removes his knee at 0:06.

Prior to watching the video during his interview, PO Sikora denied restricting § 87(2)(b)'s breathing in any manner or hearing § 87(2)(b) complain that he could not breathe [BR 30]. After reviewing the footage, PO Sikora confirmed he was the officer with his knee on § 87(2)(b). He explained that the knee was on § 87(2)(b)'s shoulder blade to prevent him from getting up. PO Sikora denied placing his knee on § 87(2)(b)'s neck or restricting his breathing.

Sgt. Martinez and PO Gerardi denied observing PO Sikora placing his knee on § 87(2)(b)'s neck or § 87(2)(b) indicating he could not breathe at any point [BR 28, 29].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (K) Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Muhammed Ali spoke discourteously to individuals.

This allegation was pled based on the BWC recorded by PO Ali. It is undisputed that he made a discourteous remark to an unidentified individual.

PO Ali's BWC footage, attached to IA81, depicts PO Ali already being present on the scene [BR 81]. At 0:09, PO Ali walks past the location where § 87(2)(b) was being apprehended and stands by a building, where two-three civilians are gathered. They linger by the entrance to the building, approximately seven to 10 feet away from PO Ali. Other officers are also seen standing near the building. A flashlight is seen shining at the building and a male individual tells the officer to stop shining the flashlight. The male continues saying that he would call the CCRB since he has the agency on speed dial. At 0:48, PO Ali states, "It's all right here," pointing towards his BWC. The male continues saying that the officers were wrong by placing a knee on § 87(2)(b)'s face and neck. Another officer and PO Ali tell the male that they had just gotten to the scene. At 1:44, the same civilians continue discussing the incident with an officer not in the camera view now moving closer to PO Ali. At 1:51, the male tells the officers not to shine the lights into his apartment and at 1:58, PO Ali says, "Alright, somebody's fucking up there." The male responds, "That's my apartment," and at 2:03, PO Ali says, "So, ok. You don't own that (inaudible) building." PO Ali subsequently uses the word "fuck" several times but based in the footage, he was interacting with other officers at the time.

Upon reviewing the video during his interview, PO Ali acknowledged he was the officer who told the male that "somebody" was "fucking up" and explained he "just used those words"

[BR 26]. He did not have a reason for his choice of words. PO Ali stated he was talking in general to the civilians who were standing in front of him. PO Ali further clarified that he was slightly angry at them since they were not listening to the officers after he and his partner told them to stay away. However, PO Ali did not recall in what way the civilians were not listening to the officers' commands. PO Ali could not tell what he exactly he said at 2:03 but denied using profanity in that sentence.

NYPD Patrol Guide Procedure 203-09 states that officers should interact with the public in a professional manner [BR 34]. Officers may use limited profanity towards civilians to gain control of a dynamic situation. Unacceptable under normal circumstances, profanity may be excused in the course of a violent confrontation. Police Department v. St. Clair, DAO-DCT Case #2017-17276 [BR 35].

§ 87(2)(g)

Allegation (L) Abuse of Authority: At the 75th Precinct stationhouse, Police Officer Daniel Gerardi strip-searched § 87(2)(b)

This allegation was pled based on the BWC footage. It is undisputed that PO Gerardi strip-searched § 87(2)(b)

According to BWC footage from PO Damico, attached to IA84, he searched § 87(2)(b) in front of the 75th Precinct stationhouse desk starting at 1:03 [BR 23]. PO Gerardi's BWC footage, attached to IA85, partially captures the same search by PO Damico [BR 24]. During the search, § 87(2)(b)'s pants already hang exposing his boxers from the front and back since he is not wearing a belt. The video then shows PO Damico and PO Gerardi take § 87(2)(b) to the holding pen area to lodge him in a cell at 3:37. § 87(2)(b) stands in the general holding pen area to the right of the fingerprinting machine and to the left of an open doorway leading to the stationhouse lobby. PO Gerardi pats down and searches § 87(2)(b) again before placing him in the cell. § 87(2)(b)'s boxers are already exposed before PO Gerardi starts his search at 4:25. Between 5:03 and 5:10, PO Gerardi pulls § 87(2)(b)'s boxers from the back and shines his flashlight inside. At 5:19, PO Gerardi pulls § 87(2)(b)'s boxers from the front and shines his flashlight inside. He then pulls § 87(2)(b)'s pants up to cover his underwear and pats his groin area. Nothing is found on or removed from § 87(2)(b) and he is placed in the holding cell.

In his interview, PO Gerardi acknowledged pulling out § 87(2)(b)'s underwear during the search in the holding cell area before any footage was shown to him [BR 29]. He frisked and looked into § 87(2)(b)'s underwear because he previously concealed something on his person.

PO Gerardi did not believe that his actions constituted a strip-search and stated that a strip-search is when someone's clothes are removed and they are searched. PO Gerardi was not given any instructions by a supervisor to strip-search § 87(2)(b) PO Gerardi's memo book entries regarding the incident do not mention a strip-search [NYPD 17].

Before video footage was shown to him during the interview, Sgt. Martinez testified he was not present when § 87(2)(b) was lodged in the cells and believed that he was not strip-searched [BR 28]. None of the officers requested Sgt. Martinez's authorization to strip-search § 87(2)(b). Upon reviewing the video, Sgt. Martinez stated he was never informed by anyone that PO Gerardi pulled out and looked into § 87(2)(b)'s underwear. However, Sgt. Martinez did not consider said actions a strip-search and characterized them as a routine search. To Sgt. Martinez's understanding, a strip-search is when someone "drops their pants and squats."

All three officers testified they were not familiar with § 87(2)(b) [BR 28, 29, 30]. PO Sikora was unaware if § 87(2)(b) was strip-searched or whether any instructions to strip-search him were given to other officers [BR 30].

Neither § 87(2)(b)'s arrest report #§ 87(2)(b) nor his Command Log arrest stamp document that § 87(2)(b) was strip-search [NYPD 15, 18].

According to NYPD Patrol Guide Procedure 208-05, a strip search is any search in which an individual's undergarments and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas [BR 36]. A strip search may only be conducted with the knowledge and approval of the arresting officer's immediate supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. The nature of the crime, arrest circumstances, subject's reputation, acts of violence, unaccounted "hits" on metal detectors or manometers, and any discoveries or information from previous searches from the same individual or others arrested with him/her should be considered when determining whether to conduct a strip-search.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(4-b)

[REDACTED]

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the 20th complaint to which § 87(2)(b) has been a party [BR 40]. All but two contain FADO allegations.
- This is a first CCRB complaint to which § 87(2)(b) has been a party [BR 40].
- Sgt. Martinez has been a member of service for 20 years and has been a subject in 41 other CCRB complaints and 129 allegations, of which 15 were substantiated:
 - 200205713 involved a substantiated allegation of discourtesy-word against Sgt. Martinez. The Board recommended Charges and the NYPD imposed Command Discipline A.
 - 200704280 involved substantiated allegations of physical force and threat of force against Sgt. Martinez. The Board recommended Charges and the NYPD declined to prosecute.
 - 201101407 involved substantiated frisk and stop of a person allegations against Sgt. Martinez. The Board recommended Command Discipline and the NYPD imposed Instructions.
 - 201310387 involved a substantiated allegation of physical force against Sgt. Martinez. The Board recommended Charges and the NYPD forfeited 10 vacation days from him.
 - 201510169 involved substantiated allegations of frisk, search of a person, and stop against Sgt. Martinez. The Board recommended Command Discipline B and the NYPD imposed the recommended penalty.
 - 201606105 involved a substantiated detainment allegation against Sgt. Martinez. The Board recommended Command Discipline B and NYPD declined to prosecute.
 - 201610287 involved substantiated allegations of vehicle search, discourtesy-word, frisk, and interference with recording against Sgt. Martinez. The Board

- PO Gerardi has been a member of service for six years and has been a subject in one other CCRB complaint and two allegations, none of which were substantiated. § 87(2)(g)
- PO Sikora has been a member of service for six years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated.
- PO Ali has been a member of service for eight years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated.

- This case was not suitable for mediation.
- As of June 19, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim having been filed in regards to this complaint [BR 39].
- § 87(2)(b)
- § 87(2)(b)

Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date